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In re Application of	:	
Jack L. ARONOWITZ et al.	:	DECISION ON
Application No.: 09/297,649	:	
PCT No.: PCT/US98/19190	:	PETITION
International Filing Date: 11 September 1998	:	
Priority Date: 11 September 1997	:	UNDER 37 CFR 1.47(a)
For: NONINVASIVE TRANSDERMAL	:	
SYSTEMS FOR DETECTING ANALYTES	:	

This is a decision in response to the petition filed under 37 CFR 1.47(a) on 07 December 1999, to accept the application without the signature of co-inventor Joel R. Mitchen.

BACKGROUND

On 11 September 1998, applicants filed international application PCT/US98/19190, which claimed priority of earlier United States application 08/929,262, filed 11 September 1997.

On 04 May 1999, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the requisite basic national fee as required under 35 U.S.C. 371(c)(1).

On 07 June 1999, the United States Designated/Elected Office mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US) (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) and the surcharge under 37 CFR 1.492(e) for filing of the oath or declaration later than twenty months from the priority date were required. The Notification set a ONE (1) MONTH period for response.

On 07 December 1999, applicants submitted a RESPONSE TO MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US). The response included a declaration signed by each inventor except Joel R. Mitchen, the fee under 37 CFR 1.492(e), a petition under 37 CFR 1.47(a), and the required petition fee.

### DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(i), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

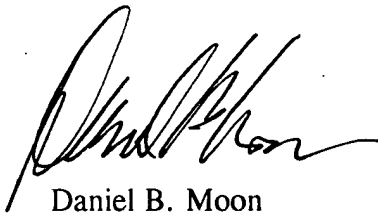
The petition lacks item (2) above. MPEP 409.03(d) requires an affidavit or declaration of facts be submitted which fully describes the exact facts which are relied upon to establish that a diligent effort was made when inability to reach or locate an inventor is the reason for filing under 37 CFR 1.47. Furthermore, MPEP 409.03(d) requires copies of documentary evidence that support a finding that the non-signing inventor cannot be reached be made part of the affidavit or declaration. The petition in the present case lacks any supporting affidavit or declaration signed by a person having firsthand knowledge of the facts recited therein. The petition also lacks any supporting documentary evidence, such as certified mail return receipts or cover letters of instructions. The petition consists merely of a statement signed by applicants' representative, Mr. Peter J. Manso. The petition alleges that numerous attempts have been made to contact Mitchen. However, no details or documentation of such attempted contacts have been provided, such as manner and dates of such attempts, and any documentary evidence of such attempts. The petition also alleges that papers for execution have been sent to Mitchen's Last Known Address. However, no details or documentation of such correspondence have been provided, such as the date and contents of such correspondence, as well as any cover letter of instructions sent, and any certified mail return receipt. Further, the petition states that applicants' representative "recently learned" of the stated Last Known Address, and "has been advised that Mitchen has moved and left no forwarding address or contact number." Details such as the dates and sources of such information are lacking, as well as any supporting documentary evidence.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.47(a) is **DISMISSED**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any request for reconsideration should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C., 20231, with the contents of this letter marked to the attention of the PCT Legal Office.



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